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*Counsel for Defendants*

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

|   |   |                                   |
|---|---|-----------------------------------|
| -----   | X |                                   |
| MICHAEL NIELSEN, on behalf of himself and on    | : | <b><u>ECF CASE</u></b>            |
| behalf of all other similarly-situated persons, | : |                                   |
|   | : |                                   |
| Plaintiff,                                      | : | Case No: 12 CV 8383 (RA)(KNF)     |
|   | : |                                   |
| v.  | : | <b>DEFENDANTS' NOTICE OF</b>      |
|   | : | <b>MOTION TO DISMISS PORTIONS</b> |
| THE CLARKE'S GROUP, LLC d/b/a P.J.              | : | <b>OF PLAINTIFF'S AMENDED</b>     |
| CLARKE'S, P.J. CLARKE'S AT LINCOLN              | : | <b><u>COMPLAINT</u></b>           |
| SQUARE, LLC d/b/a P.J. CLARKE'S; P.J.           | : |                                   |
| CLARKE'S ON THE HUDSON, LLC d/b/a P.J.          | : |                                   |
| CLARKE'S; and ERS ENTERPRISES, INC. d/b/a       | : |                                   |
| P.J. CLARKE'S,                                  | : |                                   |
|   | : |                                   |
| Defendants.                                     | : |                                   |
| -----   | X |                                   |

**PLEASE TAKE NOTICE** that upon the annexed memorandum of law, affirmation of Philip A. Goldstein, and upon all the pleadings and proceedings had herein, Defendants will move the Court before the Honorable Ronnie Abrams at the United States District Courthouse for the Southern District of New York, located at 500 Pearl Street, Courtroom 9B, New York, New York, 10007, for an Order pursuant to FED. R. CIV. P. 12(b)(6) granting the motion of Defendants to dismiss portions of the Amended Complaint of Plaintiff MICHAEL NIELSEN ("Plaintiff") on the grounds that portions of the Amended Complaint fail to state a claim on which relief can be granted, and for such other, further, or different relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Individual Rules and Practices in Civil Cases for Ronnie Abrams, United States District Judge, on February 14, 2013, counsel for the parties conferred via telephone to discuss Defendants' motion to dismiss and used their best efforts to resolve the matters raised in Defendants' motion to dismiss. Counsel's telephone conversation included a discussion concerning the parties' respective position(s) on the matters raised in Defendants' motion to dismiss and whether Plaintiff wanted to amend his Amended Complaint. Counsel for the parties were unable to resolve the issues raised in the instant motion and counsel for Plaintiff did not want to amend the Amended Complaint prior to motion practice.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Local Civil Rule 6.1, Plaintiff's Answering Papers and opposing affidavits, if any, are to be served and filed by, March 6, 2013, and Defendants' reply affidavits and memoranda of law, if any, are to be served and filed by March 13, 2013.

Dated: February 20, 2013

**McGUIREWOODS LLP**

By: s/ Philip A. Goldstein  
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